

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 09/23/2024

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JUNWU GONG,

Plaintiff,

-v-

STUART M. SARNOFF, O'MELVENY & MYERS
LLP, CARL M. STANTON, CITY OF NEW YORK,
OFFICER JOHN DOE 1, OFFICER JOHN DOE 2,
OFFICER JOHN DOE 3, OFFICER JANE DOE

Defendants.
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23-cv-343 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

On August 1, 2024, the Court issued an Opinion and Order dismissing this case. Dkt. No. 108. Judgment was entered on August 2, 2024. Dkt. No. 109. On September 4, 2024, Plaintiff filed a motion for leave to file a late notice of appeal, three days after the 30-day deadline for an appeal as of right in Federal Rule of Appellate Procedure 4(a)(1), and for “reconsideration” in light of new information. Dkt. No. 110. Defendants have not made any opposition.

In support of the motion, Plaintiff states that the “motion is filed only 3 days past the 30-day deadline, and as such no parties will be unduly prejudiced.” Plaintiff also states that he has “recently discovered new information, specifically the correct identity of the driver described in the Complaint, and previously incorrectly identified as ‘Carl Stanton.’” Dkt. No. 110 at 1.

First, Plaintiff’s motion for reconsideration is denied. The motion is properly understood to be one under Federal Rule of Civil Procedure 60 because judgment has been entered. Under Federal Rule of Civil Procedure 60, a party may obtain relief from a final judgment based on


“newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b).” Fed. R. Civ. Proc. 60(b)(2). Plaintiff has not provided any information as to why the information about the identity of the driver named in the complaint could not have been discovered sooner. The complaint in this case naming the driver as Carl Stanton was filed on January 18, 2023. Plaintiff has had more than 21 months to ascertain the identity. Accordingly, the motion for relief from the judgment is denied.

Second, under Federal Rule of Appellate Procedure 4(a)(5)(A), the Court may extend the time to file a notice of appeal beyond the 30-day deadline if the “party shows excusable neglect or good cause.” Fed. R. App. Proc. 4(a)(5)(A)(ii). Plaintiff has made no attempt to show excusable neglect or good cause. Plaintiff has simply stated that there is no prejudice because the motion was filed only three days past the deadline. Absent any showing whatsoever of good cause or excusable neglect, the Court cannot grant Plaintiff’s motion.

Plaintiff may supplement their motion for leave to file a late notice of appeal with additional information going to whether there is excusable neglect or good cause by September 30, 2024. If no supplemental motion is received by that date, the Court will deny the motion.

SO ORDERED.

Dated: September 23, 2024
New York, New York


LEWIS J. LIMAN
United States District Judge